

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No: 528 of 2000

Judgment reserved on 12.4.2007

Date of decision: 23.04.2007

The A.C.C. Ltd.

Petitioner

Versus

State of H.P. and others

Respondents

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

***Whether approved for reporting?*¹**

**For the Petitioner: Mr.M.M.Khanna, Senior Advocate, with
Mr.Goverdhan Sharma, Advocate**

**For the Respondents: Mr.M.S.Chandel, Advocate General with
Mr. R.M.Bisht, Deputy Advocate General.**

Per Deepak Gupta, J.

The petitioner company is engaged in the manufacture of cement at Barmana in Himachal Pradesh.

The respondent-State has enacted the H.P.Taxation (On Certain Goods carried by Road) Act, 1999, (hereinafter referred to as the Goods Carried by Road Act) which received the assent of the President of India on 19th August, 1999. This Act provide for the levy of tax on

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment?***

certain goods carried by road in the State of Himachal Pradesh. Section 3 is the charging section and provides for different rates of tax as per the schedule. Tax was recovered from the petitioner for transportation of coal from outside Himachal Pradesh to within the State of Himachal Pradesh. The petitioner initially filed CWP No. 139 of 2000 in this court challenging the imposition of the said tax. At the relevant time the relevant entry No. 16 in the schedule read is as follows:-

“16. (a) Bricks	Rs.30/- per thousand
(b) Bajri	Rs. 5/- per ton
(c) Sand	Rs. 5/- per ton
(d) Other minor Minerals excluding Barytes, Shale and Rock Salt”	Rs. 10/- per ton

The contention of the petitioner was that coal was not a minor mineral and, therefore, no tax could have been levied on the transportation of coal. Thereafter the State amended item No. 16 of the schedule and after amendment the same reads as follows:-

“16. (b) Bajri	Rs. 7/- per ton
(c) Sand	Rs. 7/- per ton
(d) Other Mineral (excluding Barytes, Shale and Rock Salt)”.	Rs. 7/- per ton

The contention of Mr. M.M.Khanna, learned Senior Advocate, is that even though the word `minor' before the word `mineral' against item No. 16(d) has been deleted, a reading of entry 16 shows that the entry relates to minor minerals only and the intention of the legislature was not to bring major minerals like coal within the ambit of the entry. It is also contended that the field of taxation on major minerals is occupied by the Central Legislation, i.e. Mines and Minerals (Development and Regulation) Act, 1957, (hereinafter referred to as the Mines Act) and, therefore, the State Government is not competent to levy any tax on coal which is admittedly a major mineral.

We have given our careful consideration to the contention raised by the petitioner and are afraid that both the contentions are without any merit.

Ist Contention

As far as the first contention is concerned, admittedly prior to the amendment, item No. 16(d) of Schedule I of the Act read as "minor minerals". At that time the challenge of the petitioner was that since coal is not a minor mineral and is a major mineral falling within

the ambit of the Mines Act, the same could not be treated to be a minor mineral. It was thereafter that the schedule to the Act was amended and the word minor was removed. The schedule as it now reads provides that the tax can be levied at the rate prescribed therein on all minerals (excluding Barytes, Shale and Rock Salt). Therefore, the generic term “mineral” will include both “minor and major minerals”. This also appears to be the intention of the legislature when it amended the schedule and deleted the word minor. If the intention had been otherwise, there was no need to delete the word “minor”. This is a clear indication of the fact that the legislature intended to levy the tax on all types of minerals except those specifically excluded.

Ind Contention

It would be pertinent to mention that the field occupied by the Mines Act which has been enacted by the Parliament is totally different from the field occupied by the taxation on certain goods carried out by roads Act enacted by the State Government. The Mines Act has been enacted by the Parliament obviously in relation to entry No. 54 List I of the 7th Schedule to the Constitution of India. This relates to Regulation of Mines and Mineral

Development. No doubt, royalty is charged under Section 9 of this Act. However, the royalty is charged for the removal of the minerals from the leased area. The tax imposed by the State is a tax on the carriage of goods within the State of Himachal Pradesh. They occupy two entirely separate fields and do not overlap. The State Act is within its competence and has received the assent of the President of India.

In view of the above discussion, we are of the view that there is no merit in the writ petition which is dismissed. No order as to costs.

(Deepak Gupta),J.

April 23, 2007(K)

(Surinder Singh),J.